

CHAPTER NO. 165

SENATE BILL NO. 1655

By Elsea, Atchley

Substituted for: House Bill No. 1378

By Ford, Boyer

AN ACT To amend Tennessee Code Annotated, Title 45, Chapters 5 and 13, relative to the regulation of industrial loan and thrift companies and certain mortgage lenders, mortgage loan servicers and mortgage loan brokers and to amend Tennessee Code Annotated, Section 45-17-115, relative to hearings on violations under the Deferred Presentment Services Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-5-102, is amended by adding the following new subsections to be appropriately designated:

() "Control" means possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities by contract or otherwise; provided, that no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person. For purposes of this section, a person who, directly or indirectly, owns, controls, holds the power to vote, or holds proxies representing twenty-five percent (25%) or more of the then outstanding voting securities issued by another person is presumed to control such other person. For purposes of this section, the commissioner may determine whether a person, in fact, controls another person;

() "Controlling person" means any person in control of a registrant;

() "Person" means an individual, corporation, firm, trust, estate, partnership, joint venture or association, as the context may require.

SECTION 2. Tennessee Code Annotated, Section 45-5-102(5), is amended by inserting the words ", other than a "mortgage loan" as defined in Tennessee Code Annotated Section 45-13-102(6)," between the words "loans" and "for", and by deleting the second sentence in its entirety and substituting the following language:

Provided, however, that, for loans, other than a mortgage loan, a natural person may refer a potential borrower to a registrant and receive a fee or consideration from the registrant without being deemed an "endorsement company", so long as such natural person does not claim to be a loan broker or "endorsement company".

SECTION 3. Tennessee Code Annotated, Section 45-5-202(b), is amended by deleting the words "an investigation fee in the amount of fifty dollars (\$50.00)" and substituting instead the words "a nonrefundable investigation fee in the amount of three hundred seventy-five dollars (\$375.00)" and by adding the following sentence to the end of subsection (b):

The investigation fee shall constitute the registration fee for the first registration year or part thereof.

SECTION 4. Tennessee Code Annotated, Section 45-5-202, is amended by adding the following as new subsections:

(c) At the time of the filing of an application for a certificate of registration, the applicant shall also file with the commissioner a surety bond payable to the state or a letter of credit, in each case in a form to be approved by the commissioner, for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of the registrant or the registrant's employees, or both. If the applicant proposes to make loans secured by a mortgage, the surety bond or letter of credit shall be in the amount of two hundred thousand dollars (\$200,000). For all other applicants, the bond or letter of credit shall be in the amount of fifty thousand dollars (\$50,000). Only one (1) bond or letter of credit is required for any registrant, irrespective of the number of employees or offices of such registrant. The bond or letter of credit shall be maintained by the registrant for not less than twenty-four (24) months following the expiration, revocation, suspension, or surrender of the certification of registration.

(d) A person registered under this Act on July 1, 2001, shall comply with the requirements of subsection (c) upon the filing of a renewal application on or before June 1, 2002.

SECTION 5. Tennessee Code Annotated, Section 45-5-203, is amended by deleting subsections (a) and (b) in their entirety and substituting the following language:

A certificate of registration shall expire on July 1. Each certificate of registration may be renewed upon application by the registrant showing continued compliance with the requirements of § 45-5-201, and payment of an annual registration fee of three hundred twenty-five dollars (\$325.00). The completed renewal application and payment of the annual registration fee shall be sent to the department on or before June 1 of each year.

SECTION 6. Tennessee Code Annotated, Section 45-5-205(a), is amended by inserting the words "opportunity for a" after the word "and" and before the word "hearing".

SECTION 7. Tennessee Code Annotated, Section 45-5-301, is amended by adding the following new subsection to be appropriately designated:

() Make any change among the president, chief executive officer, treasurer, or chief financial officer, or among the general partner or partners, provided the registrant gives written notice to the commissioner within fourteen (14) days of the change and furnishes such other information as the commissioner may require.

SECTION 8. Tennessee Code Annotated, Section 45-5-403(a), is amended by adding the following new subdivision to be appropriately designated:

() In the case of loans secured by a residential mortgage, a registrant may, from the service charge imposed under section 1(A) above, pay a mortgage broker, licensed or otherwise exempt from licensing under the Residential Lending Brokerage and Servicing Act (TCA, Title 45, Chapter 13) a fee for the services actually rendered by the

mortgage broker with respect to a specific transaction; provided, however that the aggregate fee paid to a mortgage broker may not exceed the 4%, which may be imposed under section (1)(a) above.

SECTION 9. Tennessee Code Annotated, Title 45, Chapter 5, Part 5, is amended by adding the following new sections:

45-5-506. Change of control.

(a) A change in control of a registrant shall require thirty (30) days prior notice in writing to the commissioner. However, in the case of a publicly traded corporation, such notification shall be made in writing within thirty (30) days of a change or acquisition of control of a registrant.

(b) Upon such notification, the commissioner may require such information as deemed necessary to determine whether an application for registration is required. The commissioner may waive the filing of an application if, in the commissioner's discretion, the change in control does not pose any risk to the interests of the public.

(c) Whenever control of a registrant is acquired or exercised in violation of this section, the registration of the registrant shall be deemed revoked as of the date of the unlawful acquisition of control. Such registrant, or its controlling person, shall surrender the registration to the commissioner on demand.

45-5-507. Bar from industry.

(a) The commissioner, after notice and opportunity for hearing, may censure, suspend for a period not to exceed twelve (12) months, or bar a person from any position of employment, management or control of any registrant, if the commissioner finds:

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this chapter or rule or regulation or order of the commissioner; or,

(2) That the person:

(A) has been convicted of or pled guilty to or nolo contendere to any crime, or

(B) has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if the crime or civil or administrative judgment involved any offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this chapter.

(b) Persons suspended or barred under this section are prohibited from participating in any business activity of a registrant and from engaging in any

business activity on the premises where a registrant is conducting its business. This subsection shall not be construed to prohibit suspended or barred persons from having their personal transactions processed by a registrant.

(c) This section shall apply to any violation, conviction, plea, or judgment after the enactment of this section.

45-5-508. Filing of written report with Commissioner-Events impacting activities of registrant.

Within fifteen (15) days of the occurrence of any one (1) of the events listed below, a registrant shall file a written report with the commissioner describing such event and its expected impact on the activities of the registrant:

(1) The filing for bankruptcy or reorganization by the registrant;

(2) The institution of revocation or suspension proceedings against the registrant by any state or governmental authority;

(3) The denial of the opportunity to engage in business by any state or governmental authority;

(4) Any felony indictment of the registrant or any of its officers, directors or principals, or partners;

(5) Any felony conviction of the registrant or any of its officers, directors, principals, or partners; and

(6) Such other events as the commissioner may determine and identify by rule.

45-5-509. Preservation of records-reproduction. All books and records required to be preserved by any regulation of the commissioner or required by any federal statute, regulation, or regulatory guideline, as applicable to each registrant, shall be preserved and made available to the commissioner, as provided in this chapter, for a period of twenty-five (25) months on all rejected applications and for a period of twenty-four (24) months on loans paid in full. The registrant may cause any or all records at any time in its custody to be reproduced and/or preserved by itself or by any other person who agrees in writing to submit its operations to the examination of the commissioner to the extent that such operations directly affect such recordkeeping, by any microphotographic process, electronic and/or mechanical data storage technique or any other means. Any such record reproduced and/or preserved by any such process, technique or means shall have the same force and effect as the original record and be admitted into evidence equally with the original.

SECTION 10. Tennessee Code Annotated, Section 45-13-102, is amended by adding the following new subsection to be appropriately designated:

() "Control" means possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities by contract or otherwise; provided, that no individual shall be deemed to

control a person solely on account of being a director, officer, or employee of such person. For purposes of this section, a person who, directly or indirectly, owns, controls, holds the power to vote, or holds proxies representing twenty-five percent (25%) or more of the then outstanding voting securities issued by another person is presumed to control such other person. For purposes of this section, the commissioner may determine whether a person, in fact, controls another person.

SECTION 11. Tennessee Code Annotated, Section 45-13-103(a), is amended by deleting the words "filing a registration statement" and substituting instead the words "obtaining a certificate of registration".

SECTION 12. Tennessee Code Annotated, Section 45-13-103(b), is amended by deleting the words "or any subsidiary of the foregoing" and inserting the words "any subsidiary of the foregoing, or" between the words "investment banker" and "industrial loan and thrift company".

SECTION 13. Tennessee Code Annotated, Section 45-13-105(c)(1), is amended by deleting the number "10" in the first sentence and substituting instead the number "1".

SECTION 14. Tennessee Code Annotated, Section 45-13-105(c)(2), is amended by deleting the number "10" in the first sentence and substituting instead the number "1".

SECTION 15. Tennessee Code Annotated, Section 45-13-106(a), is amended by deleting such subsection in its entirety and by substituting instead the following:

(a) At the time of filing of an application for a license, the applicant shall also file with the commissioner a surety bond payable to the state or an irrevocable letter of credit, in each case in a form to be approved by the commissioner, for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of the licensee or the licensee's employees, or both. If the applicant proposes to make or service mortgage loans, the surety bond or irrevocable letter of credit shall be in the amount of two hundred thousand dollars (\$200,000). For all applicants whose activities are limited to the brokering of mortgage loans, the surety bond or irrevocable letter of credit shall be in the amount of ninety thousand dollars (\$90,000). Only one (1) bond or letter of credit is required for any licensee, irrespective of the number of employees or offices of such license. A person licensed under this part on July 1, 2001, shall comply with the requirements of this subsection upon the filing of a renewal application on or before December 1, 2002.

SECTION 16. Tennessee Code Annotated, Section 45-13-107, is amended by deleting the language of subsection (a), redesignating subsection (b) as a new subsection (c) and substituting the following language as new subsections (a) and (b):

(a) Each licensee or registrant shall notify the commissioner five (5) days prior to any change in the principal place of business of a licensee or registrant.

(b) Each licensee or registrant shall notify the commissioner in writing within fourteen (14) days of any change among the president, chief executive officer, treasurer or chief financial officer or among the general partners or partners of a licensee or registrant.

SECTION 17. Tennessee Code Annotated, Section 45-13-108(a), is amended by inserting the words "or suspend" between the words "revoke" and "any" and further by inserting the words "notice and opportunity for a " after the word "after" and before the word "hearing".

SECTION 18. Tennessee Code Annotated, Section 45-13-110, is amended by redesignating the first paragraph as subsection (a) and adding the following language as subsection (b):

Any licensee or registrant, after receiving the prior written approval of the commissioner, may maintain records at any location in state or out of state.

SECTION 19. Tennessee Code Annotated, Section 45-13-119(b), is amended by deleting the word "license" in the second sentence and substituting instead the words "certificate of registration".

SECTION 20. Tennessee Code Annotated, Title 45, Chapter 13, Part 1, is amended by adding the following new sections:

45-13-120. Change of control.

(a) A change in control of a registrant or licensee shall require thirty (30) days prior written notice to the commissioner. In the case of a publicly traded corporation, such notification shall be made in writing within thirty (30) days of a change or acquisition of control of a registrant or licensee.

(b) Upon notification of a change in control, the commissioner may require such information as deemed necessary to determine whether an application for registration or license is required. The commissioner may waive the filing of an application if, in the commissioner's discretion, the change in control does not pose any risk to the interests of the public.

(c) Whenever control of a registrant or licensee is acquired or exercised in violation of this section, the registration or license of the registrant or licensee shall be deemed revoked as of the date of the unlawful acquisition of control. Such registrant or licensee, or its controlling person, shall surrender the registration or license to the commissioner on demand.

45-13-121. Bar from industry.

(a) The commissioner, after notice and opportunity for hearing, may censure, suspend for a period not to exceed twelve (12) months, or bar a person from any position of employment, management or control of any licensee or registrant, if the commissioner finds:

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this chapter or rule or regulation or order of the commissioner; or,

(2) That the person:

(A) has been convicted of or pled (pled guilty to) nolo contendere to any crime, or

(B) has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if the crime or civil or administrative judgment involved any offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this chapter.

(b) Persons suspended or barred under this section are prohibited from participating in any business activity of a registrant and from engaging in any business activity on the premises where a registrant is conducting its business. This subsection shall not be construed to prohibit suspended or barred persons from having their personal transactions processed by a registrant.

(c) This section shall apply to any violation, conviction, plea, or judgment after the enactment of this section.

45-13-122. Filing of written report with Commissioner-Events impacting activities of registrant.

Within fifteen (15) days of the occurrence of any one (1) of the events listed below, a registrant shall file a written report with the commissioner describing such event and its expected impact on the activities of the registrant in the state:

(1) The filing for bankruptcy or reorganization by the registrant;

(2) The institution of revocation or suspension proceedings against the registrant by any state or governmental authority;

(3) The denial of the opportunity to engage in business by any state or governmental authority;

(4) Any felony indictment of the registrant or any of its officers, directors or principals;

(5) Any felony conviction of the registrant or any of its officers, directors, or principals; and

(6) Such other events as the commissioner may determine and identify by rule.

SECTION 21. Tennessee Code Annotated, Section 45-17-115, is amended by inserting the words "notice and opportunity for" after the word "after" and before the word "a" in the first sentence.


SECTION 22. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision of or application, and to that end the provisions of this act are declared to be severable.

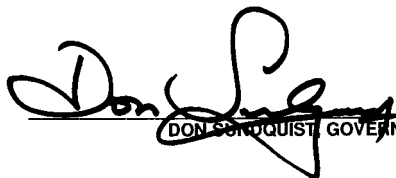
SECTION 23. This act shall take effect on July 1, 2001, the public welfare so requiring it.

PASSED: April 30, 2001


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 3rd day of May 2001


DON SUNDQUIST, GOVERNOR